

PUBLIC SERVICE COMMISSION
STATE OF MONTANA

Dave Fisher, Chairman
Nancy McCaffree, Vice Chair
Bob Anderson
Danny Oberg
Bob Rowe



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1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601
Telephone: (406) 444-6199
FAX: (406) 444-7618
Compuserve: 70642,1607

July 12, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington DC 20554

RE: CC Docket No. 94-129

Dear Sir:

Enclosed for filing in the above described docket are the Comments of the Montana Public Service Commission. I have enclosed the original and eleven copies. Please return a conformed copy of this letter. I have enclosed a self-addressed stamped envelope for your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen Finstad Hammel".

Karen Finstad Hammel
Staff Attorney

KH/dlp

Enclosures

0+11

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	
)	CC Docket No. 94-129
Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	

**COMMENTS OF THE MONTANA PUBLIC SERVICE COMMISSION
REGARDING THE FURTHER NOTICE OF PROPOSED RULE MAKING AND
MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

The Montana Public Service Commission (MPSC) generally supports the Federal Communications Commission's (Commission's) efforts to strengthen its rules regarding unauthorized changes of consumers' telecommunications carriers because the current rules are inadequate to stop or even reduce the incidence of slamming. The MPSC has concerns, however, in light of the fact that Montana has an anti-slamming statute in effect that provides important consumer protections against slamming that differ in some respects from the existing FCC rules and from what is being proposed in this rule making.

Key provisions of the Montana law (House Bill 431 enacted by the 1997 Montana Legislature, a copy of which is included with this filing) are:

- Carriers must use one of three allowable methods to obtain a consumer's authorization for a carrier change. 1) get authorization in writing; 2) get it electronically over the phone via a toll-free number dialed by the consumer, followed by the

consumer keying in the required information; or, 3) get it verbally during a telemarketing call and have an independent third party verify the authorization.

- A carrier that initiates an unauthorized carrier change is liable to the customer for all charges incurred by the customer during the period of the unauthorized change.
- The provisions of the law apply to all carrier changes -- local exchange carrier, intraLATA carrier and interLATA carrier.

The methods allowed by Montana law for carriers to obtain valid authorization for a carrier change mirror three of the four methods specified by the Commission for verification of orders generated by telemarketing. However, unlike the Commission's current or proposed rules, the Montana law does not allow carriers to use the "welcome package" verification option.

Under Montana's law, the slamming carrier is liable to the customer for all charges incurred in a manner similar to the National Association of Attorneys General's proposal that was rejected by the Commission. In contrast, under the Commission's proposed rule, a slamming carrier would be liable to the subscriber's original carrier for all charges paid by the subscriber to the slamming carrier. The Commission's proposed reimbursement procedure only applies when the slammed subscriber has actually paid charges billed by the slamming carrier. It does not address those situations when the customer refuses to pay anything to the slamming carrier because the carrier change was unauthorized. Montana's law absolves slammed subscribers of liability for all charges incurred during the period of the unauthorized switch, whether paid or not. The MPSC has proposed rules that would limit the slamming carrier's liability to six months after the unauthorized switch occurred.

Advantages of absolving subscribers of liability for all charges assessed by unauthorized carriers include:

- 1) The slamming carrier does not profit from breaking the law, which provides the appropriate disincentive to slamming.
- 2) It provides the fair and appropriate remedy for consumers who have been slammed. It would be better to stop the deceptive telemarketing and “sweep-stakes” employed by the carriers that engage in slamming so that unauthorized switches do not happen in the first place, but at least under Montana’s law, a slammed consumer can contact the slamming carrier on his or her own and refuse to pay the bill or demand a refund of charges paid. Under the Commission’s proposed rules, a slammed subscriber who has paid the slammed carrier’s bill can get no satisfaction on his or her own, but rather must rely on his or her original carrier to pursue reimbursement of the charges. When all is said and done, the slammed subscriber gets nothing (except possibly a credit on his account with his original carrier for any lost premiums) while his or her original carrier, who did not provide the service for which the slammed subscriber was billed, gets the refund.
- 3) It is the consumer, more than the consumer’s properly authorized carrier, who is directly and keenly interested in pursuing a remedy after an unauthorized carrier change. What will the properly authorized carrier do when the consumer says he or she has been slammed, but the slamming carrier claims it obtained the con-

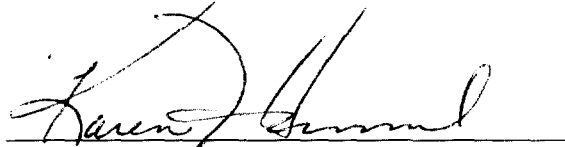
sumer's authorization in accordance with the Commission's verification procedures? This situation occurs regularly in slamming complaints handled by the MPSC and will surely continue to occur under the Commission's proposed new rules. It is unlikely that the properly authorized carrier will spend the time and energy necessary to determine the circumstances of the carrier change in such situations. Properly authorized carriers' failure to diligently pursue reimbursement from slamming carriers would result in the continuation of the present practice under which slamming carriers profit from unauthorized carrier changes. It may also be difficult for a slammed consumer to find out what progress, or lack thereof, the properly authorized carrier is making on obtaining reimbursement.

The consumer is the party who is angry and who has been injured and/or inconvenienced as a result of being slammed and is therefore much more likely to pursue his or her slamming complaint to the end to get the charges refunded or removed from his or her bill.

The Montana Legislature responded to its constituents' complaints about unauthorized carrier changes by enacting the state law that is now in effect. That law differs in some ways from the Telecommunications Act of 1996 and the Commission's existing and proposed rules. However, where we differ, Montana's law provides at least as good and arguably better consumer protection and remedies regarding slamming as the federal law and is consistent with 47 U.S.C. § 253(b), which allows states to enact their own consumer safeguards.

The MPSC appreciates this opportunity to comment.

Dated this 12th day of September, 1997.

A handwritten signature in dark ink, appearing to read "Karen Finstad Hammel", is written over a horizontal line.

Karen Finstad Hammel
Staff Attorney
Special Assistant Attorney General
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena MT 59620-2601



AN ACT PROHIBITING THE UNAUTHORIZED CHANGING OF A CUSTOMER'S TELECOMMUNICATIONS SERVICES PROVIDER; GRANTING RULEMAKING AUTHORITY TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING LIABILITY FOR VIOLATIONS; PROVIDING A PENALTY FOR VIOLATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants rulemaking authority to the public service commission for the purposes of preventing and punishing unauthorized changes in a customer's choice of a telecommunications services provider.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The purpose of [sections 1 through 6] is to prohibit telecommunications carriers, including carriers not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

- (1) "Commission" means the public service commission provided for in 2-15-2602.
- (2) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier.
- (3) "Local exchange company" means the same as provided in 53-19-302.
- (4) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long distance services.
- (5) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A

person providing other products and services is considered a telecommunications carrier only to the extent that the person is engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

Section 3. Prohibition -- exceptions. (1) A telecommunications carrier may not honor a request by any person other than a customer to change the customer's primary interexchange carriers or local exchange company except:

(a) when the requesting carrier has obtained from the customer a document signed by the customer that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) when the customer affected by the change initiates the contact with the carrier in order to request the change; or

(c) when the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must be signed by the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

Section 4. Rulemaking authority. The commission may adopt rules to implement [sections 1 through 6].

Section 5. Telecommunications carrier liability -- penalty for violation. (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of [section 3] is liable:

(a) to the customer for all intrastate long distance charges, interstate long distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service

to the customer.

(2) A telecommunications carrier who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under [section 3] is guilty of a misdemeanor and shall be punished as provided in 46-18-212.

(3) The remedies provided by this section are in addition to any other remedies available by law.

Section 6. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 through 6].

Section 7. Coordination instruction. If Senate Bill No. 89 and [this act] are both passed and approved, then [section 16] of the introduced version of Senate Bill No. 89 is void.

Section 8. Effective date. [This act] is effective on passage and approval.

-END-

HOUSE BILL NO. 431

INTRODUCED BY QUILICI, MILLS, MENAHAN, LYNCH, GRINDE, OHS, BECK, KRENZLER, PECK, RYAN,
PAVLOVICH, HARRINGTON, ZOOK, KOTTEL, MCCARTHY, GRADY, SHEA, CRIPPEN, COCCHIARELLA,
SIMON, MERCER, BENEDICT, MAHLUM, TROPILA, VAN VALKENBURG, WILSON, HARP, HERTEL,
SCHMIDT, PEASE, HIBBARD

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